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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 216

UNITED GAS PIPE LINE COMPANY, a corporation, *Petitioner*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

United Gas Pipe Line Company, Petitioner, prays that a writ of certiorari issue to review the opinion, decision, and the judgment and decree of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled case on April 5, 1950.

OPINION BELOW.

The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 349) is reported at 181 F. (2d) 796. Its judgment and decree of dismissal appears at R. 355.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b) (R. 280) and Sections 239 and 240 of the Judicial Code, as amended, 28 U.S.C. 346 and 347. The original opinion and judgment of the lower Court was entered on April 5, 1950. The petition for rehearing was denied on May 31, 1950.

STATUTES INVOLVED.

Administrative Procedure Act, Act of June 11, 1946, c. 324, 60 Stat. 237, 5 U.S.C. 1001, *et seq.*

Natural Gas Act, Act of June 21, 1938, c. 556 (52 Stat. 821), U.S.C., Title 15, §§ 717-717w. All sections of said act referred to will be found at R. 277 to 282, inclusive.

STATEMENT.

On October 30, 1948, the Federal Power Commission, Respondent, issued its Order No. 144 (R. 227) amending its regulations governing the form, composition, substance and filing of schedules of rates and charges for the transportation and sale for resale of natural gas in Interstate Commerce. The regulations promulgated by said order are shown in R. 231 to R. 256, inclusive. The said Order No. 144 was issued in a so-called rule making proceeding, Docket No. R-107 of the Federal Power Commission. Petitioner appeared in said so-called rule making proceeding and by proper pleadings (R. 27, 36, 49, 91, 257) and by oral argument (R. 102-120, 142-145) demonstrated that the proposed rules subsequently promulgated by Order No. 144 required the abrogation and breach of many of Petitioner's contracts for the transportation and sale of natural gas subject to the jurisdiction of Respondent, which contracts had been validly executed and approved by the Commission and were in the course of performance, and that said proposed rules prohibited the supplementation, extension or renewal of all of petitioner's said contracts, many of which,

e. g., percentage contracts, contemplate and require supplementation.

Under Section 5(a) of the Natural Gas Act (R. 279) Respondent was prohibited from so affecting Petitioner's said contracts except after a hearing and a justified finding of fact upon proper evidence that said contracts and the extension and supplementation thereof were unjust, unreasonable, unduly discriminatory or preferential.

Respondent refused to hold a hearing including the introduction of evidence and examination and cross-examination of witnesses, taking the position that no such hearing was required and issued its order "without passing upon the validity of the industry contention" (R. 229), after which Petitioner duly and timely applied for a rehearing and pointed out that such an order vitally affecting matters of substance would be invalid without a hearing, and again demanded a hearing (R. 257). On December 21, 1948, Respondent issued its order denying Petitioner's application for a rehearing (R. 274).

Thereafter, Petitioner duly and timely filed its Petition for a Review of Order No. 144 of Respondent, (R. 287) and of its Order issued December 21, 1948, denying Petitioner's application for rehearing (R. 274).

In compliance with Section 19(b) of the Natural Gas Act, (R. 280) Respondent on the 30th day of August, 1949, filed in the lower Court its certified record of the proceedings before it (R. 341-348). The Court below issued its opinion on April 5, 1950 (R. 349) and its judgment of dismissal on the same day (R. 355).

On the 17th day of April, 1950, Petitioner filed its application for a rehearing (R. 356) which was denied by the lower Court on the 31st day of May, 1950 (R. 368).

QUESTION PRESENTED.

The one basic question is: Should the lower Court have held that Respondent should have held a hearing under Section 5(a) of the Natural Gas Act (R. 279) before issuing

its Order No. 144 (R. 227), i.e., was such a hearing necessary for the validity and enforceability of said order?

The question of the substantive validity of Order No. 144 if issued after a real hearing is not presented.

The question on the merits as to whether Petitioner's said contracts and practices are unjust, unreasonable, unduly discriminatory or preferential is not presented.

SPECIFICATION OF ERRORS.

1. The lower Court erred in not holding that Order No. 144 of Respondent was null and void because no hearing was held, or in the alternative, in not ordering a hearing under penalty of nullity.

2. The lower Court erred in dismissing the petition for review.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

I.

The impact of the opinion of the lower Court is national in its effect because it affects the scope of the rule making power of every administrative agency of the Federal Government, and particularly the right of a party affected to obtain a Court review under the statute creating the agency. This is especially true of parties seeking a Court review under the Securities Exchange Act of 1934,[1] the Federal Power Act,[2] the Public Utility Holding Company Act of 1935,[3] and the Natural Gas Act,[4] because the review provisions of each of the first three named statutes are substantially similar to the review provisions of Section 19(b)

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[1] Act of June 6, 1934, 48 Stat. 881, 15 U. S. C. 78a-78jj.

[2] Act of June 10, 1920, c. 285, 41 Stat. 1063, as amended by Act of August 26, 1935, c. 687, 49 Stat. 838, 16 U. S. C. 791a-825r.

[3] Act of August 26, 1935, c. 687, 49 Stat. 803, 15 U. S. C. 79-79z-6.

[4] Act of June 21, 1938, c. 556, 52 Stat. 821, 15 U. S. C. 717-717w.

of the Natural Gas Act (R. 280 and 281), which is involved in the instant case.

The opinion of the lower Court will, if unreversed, be cited as authority for the proposition, especially under the above statutes, that regardless of the impact of rule making, and the fact that it may be adjudicatory in character and a hearing be required by the applicable act, there can be no Court review under the statute creating the agency, if no hearing be held, as long as the proceeding is labelled "Rule Making".

Petitioner, as a natural gas pipe line company, is one of the hundreds of electric power and natural gas companies subject to the plenary regulatory powers of the Federal Power Commission. Additional hundreds of companies are subject to the regulatory powers of the Securities and Exchange Commission. Prior to the decision of the Court below, such companies had assurance from applicable statutes, as interpreted by the courts, that the named regulatory agencies could not, by the artful use of the "Rule Making" label, and the careful avoidance of holding a real record hearing, prevent direct judicial review of adjudicatory action on substantive matters. This assurance was found in the provisions of the basic acts conferring regulatory powers which make the exercise of such powers subject to direct court review,[5] and in the rationale of decisions of this and other courts as hereinafter cited and discussed.

The opinion and decision of the Court below has destroyed such assurance and has made the right of direct review in the courts charged with judicial supervision of the regulatory agencies dependent upon the particular agency's willingness to recognize in express terms that its action is controlled by a specific provision or provisions requiring a record hearing. The truth of the foregoing statement can best be ascertained by a reading of the lower Court's opinion in its entirety (R. 349). Without intend-

[5] Natural Gas Act, *supra*, Section 19(b); Federal Power Act, *supra*, Section 313(b); Securities Exchange Act of 1934, *supra*, Section 25(a); Public Utility Holding Company Act of 1935, *supra*, Section 24(a).

ing that the language be considered out of context, but as aptly emphasizing the reason for the granting of the writ as here presented, we quote in the footnote three excerpts from the opinion below, with emphasis supplied.[6]

Because of the importance of the United States Court of Appeals for the District of Columbia Circuit as the court of review most generally applied to by parties aggrieved by regulatory commission orders, the departure of that Court from the rationale of earlier decisions, including its own, is submitted to be of national import. We do not think it strained to say that the entire operation of administrative agency procedure and direct court review thereof is vitally affected.

II.

The lower Court, by the Petition for Review, was asked to determine that a hearing was necessary under Section 5(a) of the Natural Gas Act for the validity of Order No. 144 of Respondent.

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[6] "As petitioner views the case, although the regulations are procedural in form and superficially prospective in nature, they will in reality work a change in rates, cause certain provisions to be eliminated from its contracts, and will be retroactive in effect. Thus the argument proceeds, a quasi-judicial hearing has been denied where it should have been granted for, under Section 5(a) of the Natural Gas Act, 15 U. S. C. A. § 717d(a), rates may be changed by the Commission only after a hearing is held and they have been found to be unjust and unreasonable. *Since Commission acceptance of this view would have resulted in an order reviewable under Section 19(b)*, 15 U. S. C. A. § 717r(b), it is contended that, even absent such acceptance, review may be obtained here under that section. * * * " (R. 350)

* * * * * *

"* * * Although the distinction between rule and order is not always clearly definable, our authority to review orders of the Federal Power Commission under the Natural Gas Act does not suffer the same weakness. Not all orders were made reviewable under Section 19(b). As in the analogous provision of the Federal Power Act, Congress set out 'a distinctive formulation of the conditions under which resort to the courts may be made.' On its face, the Act contemplates review of a decision based on evidence presented in a quasi-judicial proceeding before the Commission. It specifies that the Commission shall file with the proper circuit court of appeals 'a transcript of the record upon which the order complained of was entered * * *.' 'The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive,' etc. *Unless the case comes to us after such a proceeding*, we are given no authority to directly review the Commission's action." (R. 351)

* * * * * *

"This is not a case *where the Commission has asserted authority under one of the many sections of the Act which specifically require a hearing.* If a hearing had been denied under such circumstances, we would have no difficulty in ordering one to be held. * * *" (R. 352)

Said section of the Natural Gas Act mandatorily requires a real record hearing and a justified finding of facts before the contracts and practices of Petitioner, theretofore recognized as valid by Respondent, could be abrogated or changed.

If a hearing was necessary the lower Court could have ordered one held under penalty of nullity.

Because there was no hearing on the merits, the lower Court was not required to pass on the merits or demerits of any contract or business practice, or on the merits or demerits of Order No. 144.

The lower Court held in effect that there can be no Court review under Section 19(b) unless a record hearing on the merits be held.

This means that Respondent could do anything lawful or unlawful and by refusing a hearing on the merits even though one be required by Section 5(a) of the Natural Gas Act prevent a review of its action under Section 19(b) of the Natural Gas Act.

III.

If the proceedings leading up to the adoption of the challenged Order No. 144 be tested under the Administrative Procedure Act, *supra,* it appears clear that the Commission violated that Act in refusing to hold a hearing in this matter.

The Administrative Procedure Act, Section 4(b), provides "* * * Where rules are required by statute (such as Section 5(a) of the Natural Gas Act) to be made on the record after opportunity for an agency hearing the requirements of sections 7 and 8 (which require a real record hearing) shall apply * * *" (Parenthetical insertions ours).

Since 5(a) of the Natural Gas Act (R. 279) prohibits the change in "any rate, charge or classification, * * * or any rule, regulation, practice or contract" affecting same without a real hearing, it distinctly restricts what can be done

under the Administrative Procedure Act under the guise of "Rule Making".

IV.

The lower Court was required to consider and act upon the entire record and admissions before it, and to determine if a hearing was necessary. To the contrary its opinion concedes that it is based merely on the proposition that there was not sufficient evidence before it to enable it to decide this case on the merits, i.e., as to whether the contracts and practices of Petitioner are in fact unjust, unreasonable, unduly discriminatory or preferential (R. 349). The lower Court was not asked to decide this cause on the merits.

As we shall hereinafter point out there was an abundant record before the lower Court to enable it to decide whether a hearing was necessary for the validity of Order No. 144. In addition important admissions were made by Respondent.

The opinion and decision of the lower court shows on its face (R. 352) that it was based "merely on the basis of allegations in a Petition for Review".

The admissions made by Respondent which are set forth in paragraph 5 of Petitioner's Petition for Rehearing (R. 361), and hereinafter discussed, were apparently ignored.

V.

The opinion of the lower Court is in direct conflict with the reasoning of three other decisions of the same Court, and with a decision of this Court. These cases are:

1. *American Sumatra Tobacco Corporation* v. *Securities and Exchange Commission,* 93 F. 2nd 236.
2. *Philadelphia Co.* v. *Securities and Exchange Commission,* 164 F. 2nd 889 (Writ of Certiorari denied February 2, 1948).
3. *Philadelphia Co.* v. *Securities and Exchange Commission,* 175 F. 2nd 808.
4. *Columbia Broadcasting System* v. *United States,* 316 U. S. 407; 62 S. Ct. 1194, 86 L. Ed. 1563.

1. The *Sumatra Case, supra,* involved a petition for review under Section 25(a) of the Securities Exchange Act of 1934; Act of June 6, 1934, 48 Stat. 881, 901, 15 U. S. C. 78a, 78y(a), which is similar to the review provisions of Section 19(b) of the Natural Gas Act (R. 280).

In this case the Securities and Exchange Commission made the same basic argument that Respondent made before the lower Court in the instant case. The Court said on page 238 of the opinion:

> "The position which the Commission takes is that a reviewable order within the contemplation of section 25(a) is one entered only after notice and opportunity for hearing, and upon a finding of fact. * * *"

The Court definitely rejected the Commission's arguments and said on page 241, "* * * Under our construction of the Act there will be a record, and sufficient evidence upon which to test the conclusion reached. * * *"

Petitioner shows that there was before the lower Court "a record and sufficient evidence upon which to test the conclusion reached," and it was a basic error for the lower Court to disregard that record, and the admissions in Respondent's brief filed in the lower Court, said brief being hereinafter referred to as Exhibit 1.[1]

2. In the *Philadelphia* case (164 F. 2nd 889), a review was sought under Section 24(a) of the Holding Company Act, 15 U. S. C. Section 79x(a). This section is almost identical with the review provisions of the Natural Gas Act, Section 19(b) (R. 280).

This case involved "rule making" and the Respondent Commission sought to escape judicial review by making the same argument that Respondent made in the instant case, i.e., that since no evidence was taken there was no record upon which review could be had.

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[1] At the express request of Petitioner, the Clerk of the lower Court has certified the brief filed by Respondent therein, and the certified copy thereof and ten additional copies have been lodged with the Clerk of this Court for use in connection with this petition, as Exhibit 1 hereto.

The Court flatly rejected Respondent's argument and said with respect to the record before it on page 890:

> "* * * The relevant facts are either alleged in the petition for review and admitted, for the purposes thereof, by the motion to dismiss (cf. American Sumatra Tobacco Corporation v. Securities and Exchange Commission, 1937, 68 App. D. C. 77, 93 F. 2nd 236), or are stated in the brief of Philadelphia and treated as true, or not denied, in the brief of the Commission. * * *"

3. In the *Philadelphia* case, *supra,* 175 F. 2nd 808,[1] review was sought under Section 24(a) of the Holding Company Act, *supra,* and the Respondent Commission sought to escape review by making a somewhat similar argument to that made by Respondent in the instant case.

As noted above, the review provisions of Section 24(a) of the Holding Company Act are almost identical with the review provisions of Section 19(b) of the Natural Gas Act.

This Philadelphia case was another "rule making" case and the Court found that the record before it was so incomplete that it could not decide the case on the merits, but DID DECIDE that a hearing was necessary and ordered one.

The Court said on page 819:

> "Whether or not material issues of fact exist we can determine only after an appropriate hearing and a proper record."
>
> * * * * * *
>
> "We cannot now determine the validity of the Commission's order on the merits. As we point out in the WJR case, to do so would be to omit to recognize the distinction between questions of correct procedural action and questions of correct decision on the merits. Whether the Commission was under a duty to accord a quasi-judicial hearing to Philadelphia, including allocation to the Commission of the burden of proof, is a procedural question quite separate from the question

[1] Certiorari granted, 337 U. S. 901. Appeal ordered dismissed as moot because of settlement.

on the merits whether or not the order of the Commission had a rational and lawful basis. * * *"

4. In the *Columbia Broadcasting* case, *supra,* rule making was involved and this Court said:

> "* * * The regulations are the effective implement by which the injury complained of is wrought, and hence must be the object of the attack. It is because they are an exercise of the rule-making power, and because they presently determine rights on the basis of which the Commission is required to withhold licenses and authorized to cancel them, that there is an order within the meaning of Section 402(a) and the Urgent Deficiencies Act."
>
> * * * * *
>
> "* * * The ultimate test of reviewability is not be found in an overrefined technique, but in the need of the review to protect from the irreparable injury threatened in the exceptional case by administrative rulings which attach legal consequences to action taken in advance of other hearings and adjudications that may follow, the results of which the regulations purport to control."

In the instant case, purporting to exercise rule making power, the Commission adopted rules and regulations whose operation is not made subject to the contingency of future administrative action. The impact of the rules is immediate and final upon existing and future contracts and business relationships of Petitioner and determine, prescribe and control the Commission's conduct in advance of future administrative action. The impact in the instant case is direct whereas in the Columbia case it was indirect.

VI.

The opinion of the lower Court (R. 349) states:

> "For we are asked to pierce form and find substance, to make an important decision concerning the scope of the Commission's regulatory authority, merely on the basis of allegations in a Petition for Review. The cen-

> tral question here is the effect of Order No. 144 on certain contracts of petitioner. Yet we do not even have such contracts before us as part of the record. Nor do we have the aid of testimony, affidavits, etc. It is clear to us that decisions of this kind cannot be made in vacuo; and that Congress realized it when it made our review dependent upon the sort of conditions contained in Section 19(b)."

The central question was not as above stated. The central question was whether a hearing should have been held. The statement that the Court had no affidavits before it is not correct. The entire position of Petitioner was submitted under oath. See affidavit of M. A. Abernathy, Vice-President of Petitioner (R. 49 to 54, affidavit on page 54. See also affidavit of same official R. 262).

The above affidavits were certified by Respondent to the lower Court as a part of the record before it. This is shown by the letter of transmittal and the certification of Respondent (R. 341, 342). It is to be noted that the record certified by Respondent to the lower Court is very voluminous and consists of approximately 103 documents aggregating 878 pages in three volumes.

The petition for rehearing pointed out in paragraph 5 thereof (R. 361) the many admissions made by Respondent in its brief (Exhibit I) and otherwise to the effect that certain illustrative contracts, i.e., percentage contracts and tax clause contracts [the nature of which were fully explained by Petitioner under oath (R. 49-54, 257-263), and by the oral argument of Petitioner's Counsel before Respondent (R. 102-120, 142-145)] were abrogated, prohibited or changed by Order No. 144.

Under the rules of the lower Court, Respondent had ten days after the Petition for Rehearing was filed to answer and to deny or repudiate said admissions and to deny that Petitioner's contracts, rates, schedules, charges and method of doing business were substantially modified, changed or prohibited by said Order No. 144. It is submitted that the

failure of Respondent to answer as above set forth is not without weight in assaying the allegations of the Petition for Rehearing (R. 357) and of the Petition for Review (R. 287).

VII.

As pointing out one of the reasons relied on why the writ of certiorari should issue herein, we desire to call the Court's attention to the following statement in the opinion of the lower Court (R. 353):

> "The present case is quite different. We have before us a rule directed to all companies similarly situated, and we have the Commission's binding assurance that the regulations will operate only prospectively.[6] Under such circumstances, there is at the very least a strong presumption that the Commission has merely promulgated regulations of general applicability and not orders reviewable under Section 19(b)."

And also to footnote 6 referred to in said statement giving a statement by Respondent which reads:

> "[6] In response to petitioners' argument that such regulations will not be merely prospective, the Commission reaffirmed its position, which was made a part of the stay order in the present case (issued February 28, 1949), that it 'interprets Order No. 144 as not authorizing the making of any change in an effective rate, charge, or contract provision, without compliance with the Natural Gas Act, as amended.' "

The statement in the opinion is not justified by the statement of Respondent as set forth in said footnote, and apparently, the Court was misled thereby.

To say the least, Respondent's statement is most ambiguous, and Respondent has in fact taken the position as will be hereinafter pointed out, that changes in an effective rate, charge or contract provision may be accomplished through so-called "rule making" instead of through a hearing and a finding of fact as required by Section 5(a) of the Natural Gas Act.

Respondent made admissions in its brief in the lower Court which are in conflict with the lower Court's statement that the new regulations operate only prospectively (see Exhibit I). This is shown by paragraphs 5 and 6 of the Petition for Rehearing (R. 361, 363).

As illustrative of the impact of the new rules on existing contracts, Petitioner has alleged and Respondent has not denied, and we confidently assert will not deny that existing tax clause contracts [fully explained and specifically illustrated in paragraph VII of the Petition for Review (R. 296)] are prohibited by the new rules and particularly Section 154.38(d) thereof. This section is quoted in a footnote to the Opinion of the lower Court (R. 350).

Percentage contracts which are fully explained and specifically illustrated in paragraph VIII of the Petition for Review (R. 299) require supplementation and amendment, as pointed out in said paragraph VIII, and without such supplementation and amendment, they become sterile and cannot function.

Respondent has not and will not deny that the supplementation and amendment of existing percentage contracts, which have been approved by Respondent (and which supplementation and amendment have been permitted for more than ten years by Respondent, and never prohibited until by said Order No. 144) are now by the last paragraph of Section 154.85 of the new rules prohibited (R. 251).

The foregoing demonstrates that the new rules do not as stated by the lower Court "operate only prospectively."

But assuming (which we deny) that they do "operate only prospectively," such would not make them valid. This points out an error into which the lower Court has fallen. In the *Columbia Broadcasting Case, supra,* this Court held that rules operating prospectively could have such an impact as to require a real hearing as a condition precedent to validity.

The new rules require the Respondent to reject any new tax clause and percentage contracts in the future, thus pre-

senting a similar question to that before this Court in the *Columbia Broadcasting Case.*

VIII.

Tax adjustment clause contracts are specifically named and prohibited by Section 154.38(d) of the new rules (R. 241). Tax adjustment clauses are not mentioned in the Natural Gas Act and particularly in Section 4(d) thereof (R. 277). The passing on of any part of an increased tax is not a change in a rate because the seller does not receive and keep any portion of the tax passed on. The seller remits 100% of the tax to the tax collector. See footnote 58 page 44 of Exhibit 1 and page 52 thereof, where Respondent admits, and cites authority, that a rate is the net amount received and **retained** by the seller.

For the first time tax adjustment clauses are specifically prohibited by Section 154.38(d) of the new rules. The rules and regulations of Respondent which were in effect prior to said Section 154.38(d), (which by said Order No. 144 became effective December 1, 1948) did not refer to or prohibit tax adjustment clauses. The said prior rules and regulations, as admitted by Respondent, are shown at R. 326, 327. A reading of the Natural Gas Act and particularly Section 4(d) thereof (R. 277) shows that tax adjustments are not prohibited by said Act.

Respondent states (Exhibit 1, page 50) "* * * that prohibition merely restates the filing requirements of Section 4(d) of the Act."

The above admitted prohibition of Section 154.38(d) of the rules is not a restatement of Section 4(d) of the Natural Gas Act as will be shown by a comparison of the two, through a reference to R. 241 and R. 277, respectively.

There can be no question but that Respondent admits (Exhibit 1, pages 45 and 46) that Section 154.85 prohibits amendments and supplementation of contracts. It is stated, "Thus, the former confusing practice of unlimited supplementation was prohibited." There is also here the inherent

admission that prior to the new rules Respondent permitted unlimited supplementation. In addition to this see specific admission of counsel for Respondent that the practice under the old regulations prior to December 1, 1948, was to permit such supplementation (R. 326).

There can be no question but that Respondent admits that percentage contracts are prohibited in the future, (Exhibit 1, page 53) and as aforesaid that existing percentage contracts are frozen for the reason that they cannot be amended except by a superseding contract which must meet the requirements of Section 154.38(d) of the new rules and this prohibits percentage contracts because they are not stated in dollars or cents per unit.

The lower Court should have given effect to these admissions; they were specifically referred to in the Petition for Rehearing.

IX.

By the record and the admissions of Respondent in Exhibit 1 which we have pointed out above, it has been demonstrated that Order No. 144 of Respondent is adjudicatory as to Petitioner in that its contracts and business practices have been condemned.

Such condemnation, including the abrogation, prohibition and changing of Petitioner's contracts, cannot legally be accomplished except after a hearing and a justified finding of fact upon proper evidence that such contracts and business practices are (as required by Section 5(a) of the Natural Gas Act) unjust, unreasonable, unduly discriminatory or preferential.

The following authorities abundantly sustain the foregoing:

In *Colorado Interstate Gas Co.* v. *Fed. Power Com'n.*, 142 Fed. (2d) 943, 954, aff'd., 324 U. S. 581, 65 Sup. Ct. 829, the Court pertinently observed:

> "The passage of the Act did not automatically overthrow the contracts into which these companies had

previously entered. Neither did it ipso facto set aside the schedules of charges upon which they had agreed. *Such rates and charges could be modified only after an express finding of unreasonableness.* Wichita R. & Light Co. v. Public Utilities Commission, 260 U. S. 48, 43 S. Ct. 51, 67 L. Ed. 124; Allen W. Hinkel Dry Goods Co. v. Wichison Industrial Gas Co., 10 Cir., 64 F. 2d 881. And *the right of the Commission to make a finding of unreasonableness depends upon the existence of the fact.* In the absence of substantial evidence to show that the rates and charges in existence are unreasonable, a finding to that effect constitutes the arbitrary exercise of power by administrative fiat and cannot stand. Interstate Commerce Commission v. Louisville & N. R. Co., 227 U. S. 88, 33 S. Ct. 185, 57 L. Ed. 431." (Emphasis ours)

As the lower Court had occasion to observe in *Philadelphia Co.* v. *S. E. C.*, 175 F. (2d) 808, 817:

"It is elementary also in our system of law that adjudicatory action cannot be validly taken by any tribunal, whether judicial or administrative, except upon a hearing wherein each party shall have opportunity to know of the claims of his opponent, to hear the evidence introduced against him, to cross-examine witnesses, to introduce evidence in his own behalf, and to make argument. This is a requirement of the due process clause of the Fifth Amendment of the Constitution. * * * "

"It follows from the foregoing and from the facts set forth at the outset of this opinion that the Commission's 'hearing' on the proposed amendment of Rule U-49(c) was inadequate as to Philadelphia. The Commission permitted only the submission of data, views and comments and the making of oral argument. It failed, so far as is shown by the record certified to this court, except by its vague references to its 'experience' under Rule U-49(c) and to 'situations in which the security structures of registered holding companies and their subsidiaries are entangled,' to apprize Philadelphia of the facts upon which its proposed action amending Rule U-49(c) was to be taken (thereby making futile Philadelphia's offer of proof); and it failed

to introduce or receive evidence, to hear witnesses, to permit cross-examination, and to make a proper transcript of record. Accordingly its 'hearing' did not satisfy the requirements, for adjudicatory action, of either the due process clause, the Holding Company Act, or the Commission's own rule. The Commission erroneously failed to assume the burden of proof in respect of the propriety of its proposed action. It was obliged to observe 'the essential rules of evidence.' Cf. Interstate Commerce Commission v. Louisville & Nashville Railroad Company, 1913, 227 U. S. 88, 33 S. Ct. 185, 57 L. Ed. 431. With some exceptions not here pertinent the burden of proof lies upon him who affirms, not him who denies. 1 Jones, Evidence in Civil Cases (4th ed. 1938) Sec. 180; Stephen, Digest of the Law of Evidence (12th ed. 1946) Article 100. On the contrary of assuming the burden of proof the Commission, as appears from the statement of facts at the outset of this opinion, required Philadelphia to attempt to persuade it that the exemption afforded Pittsburgh by Rule U-49(c) should not be revoked. We hold accordingly that the Commission's order was invalid for lack of a proper hearing."

In *Mallory Coal Co.* v. *National Bituminous Coal Com'n.*, 69 App. D. C. 166, 99 F. (2d) 399, the lower Court referred to the *American Sumatra Tobacco Corp.* case (93 F. 2nd 236) and stated at page 406:

"We held in the Sumatra Case that the order of the Commission might be subjected to review even though no hearing was held and no findings made to support the order, on the theory that under the circumstances of that case it was the duty of the Commission to hold a hearing and make findings. The failure, therefore, of an administrative agency to comply with its duty in this respect will not cut off the privilege and power of judicial review. In the same way, the action of such an agency in holding a hearing and making findings, under circumstances which do not call for such procedure, will not give a resulting order reviewable character, when otherwise it would not be subject to review. Thus, it is not the mere arbitrary occurrence of notice, hearing

and findings — or the absence thereof — which determines whether an order is reviewable, but rather the fact that the order is of such character that it should have been preceded by a hearing and supported by findings."

In *American Federation of Labor* v. *National L. R. Board,* 308 U. S. 401, 60 Sup. Ct. 300, the Court observed at page 408:

"* * * Administrative determinations which are not commands may for all practical purposes determine rights as effectively as the judgment of a court, and may be reexamined by courts under particular statutes providing for the review of 'orders'. See Rochester Telephone Corporation v. United States, 307 U. S. 125, 130, 135, et seq., 59 S. Ct. 754, 757, 759, 83 L. Ed. 1147; Federal Power Commission v. Pacific Power & Light Co., 307 U. S. 156, 59 S. Ct. 766, 83 L. Ed. 1180. We must look rather to the language of the statute, read in the light of its purpose and its legislative history, to ascertain whether the 'order' for which the review in court is provided, is contrasted with forms of administrative action differently described as a purposeful means of excluding them from the review provisions."

The situation presented in the present case is, with respect to the particular matter under consideration, very similar to the case of *Philadelphia Company* v. *Securities & Exchange Commission,* 164 F. (2d) 889, decided by the lower Court on October 8, 1947 (writ of certiorari denied February 2, 1948. See 68 S. Ct. 452).

The factual situation in that case is concisely set forth on page 893 of the opinion, reading as follows:

"* * * The Commission first published, on November 25, 1946, as Holding Company Release No. 7011, 'Notice of Proposed Rule Amending Rule U-49(c) Under the Public Utility Holding Company Act of 1935.' This notice granted leave to file 'data, views and comments.' Philadelphia timely requested a hearing on the proposed amendment so conducted as to apprize all parties of the facts upon which a decision to adopt the pro-

posed amendment to Rule U-49 might be predicated and and as to permit cross-examination of witnesses, introduction of rebuttal evidence by any interested party, as to apprize each party of the data, views, comments and evidence of the other parties, and as to afford a stenographic record of the evidence in support of and in opposition to the proposed amendment. This request was denied by the Commission. The latter, after permitting Philadelphia to make oral argument, adopted on February 28, 1947, the amendment to Rule U-49(c), the lawfulness of which Philadelphia by virtue of the petition in the instant proceeding, seeks to review.* * *"

On page 900 of the Opinion the Court said:

"* * * But not even the fact that the action of an administrative agency is phrased to apply generally, or may indeed have general application, is necessarily conclusive that its action is not subject to review as an 'order' under the Urgent Deficiencies Act as extended by the Communications Act, or under Section 24(a) of the Holding Company Act. If in its impact a 'rule or regulation' applies specifically and affects or determines the rights of a particular person or corporation, then the action of the agency in promulgating it is reviewable even though the 'rule or regulation' is not directed in terms to any particular person or corporation. This is evidenced by the ruling of the Supreme Court in the Columbia System case just cited. There the Federal Communications Commission by an 'order' promulgated regulations purporting to require the Commission to refuse to grant a license to any broadcasting station which entered into chain broadcasting contracts with any broadcasting network organization. The Commission had acted, as the Court said in its opinion, 'in the avowed exercise of its rule-making power.' * * *"

X.

The lower Court, for the foregoing reasons in the very words of Rule 38 of this Court "* * * has so far departed from the accepted and usual course of judicial pro-

ceedings'' and ''decided a question of general importance'' * * * ''as to call for an exercise of this Court's power of supervision.''

CONCLUSION.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 216

UNITED GAS PIPE LINE COMPANY, *Petitioner*,

v.

FEDERAL POWER COMMISSION.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 349-354) is reported at 181 F. 2d 796.

JURISDICTION

The judgment of the court of appeals was entered on April 5, 1950 (R. 355). A petition for rehearing

was denied on May 31, 1950 (R. 368). The petition for a writ of certiorari was filed on July 24, 1950. The jurisdiction of this Court is invoked under Section 19(b) of the Natural Gas Act and 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a court of appeals lacks jurisdiction under Section 19(b) of the Natural Gas Act, directly to review Order No. 144 of the Federal Power Commission, promulgating amendments of that part of its General Rules and Regulations relating to the form and composition of rate schedules and tariffs.

STATUTES INVOLVED

The pertinent provisions of the Natural Gas Act of 1938 (Act of June 21, 1938, c. 556, 52 Stat. 821, as amended, 15 U. S. C. 717 *et seq.*) appear in the pamphlet copy of the Act submitted with this brief. The pertinent provisions of the Administrative Procedure Act (Act of June 11, 1946, c. 324, 60 Stat. 237, 5 U. S. C. 1001 *et seq.* as amended) are set out in the Appendix, *infra,* pp. 18-26.

STATEMENT

On February 8, 1949, United Gas Pipe Line Company (United), a natural-gas company subject to the jurisdiction of the Federal Power Commission (Commission) under the Natural Gas Act, filed a petition in the Court of Appeals for the District of Columbia Circuit, seeking review of Commission's Order No. 144 issued on October 30, 1948

(R. 287-318). By this Order, the Commission undertook to amend that part of its General Rules and Regulations governing the form, composition, filing and posting of rate schedules and tariffs for the transportation or sale of natural gas subject to the Commission's jurisdiction (18 C.F.R. Part 154) (R. 227-256). In its petition, United alleged that by this amendment the Commission has undertaken to abrogate or change its contracts, without a hearing, thereby confiscating its property and denying it due process of law, in violation of the Fifth Amendment (R. 314). The court of appeals dismissed the petition on the ground that it was without jurisdiction under the Natural Gas Act and the Administrative Procedure Act to review regulations of general applicability (R. 349-354). The facts, which are undisputed, may be briefly summarized:

When the Natural Gas Act was approved on June 21, 1938, natural-gas companies had no rate schedules generally applicable to stated classifications of service, prevailing practice being to sell natural gas under individual contracts frequently arrived at after extensive negotiations and greatly varying in form and content (R. 227). Nevertheless, to expedite the establishment of legal rates, the Commission permitted natural-gas companies to file their contracts as rate schedules in compliance with Section 4 of the Act, when without hearing or other proceeding it issued its "Provisional Rules of Practice and Regulations under

the Natural Gas Act," effective July 11, 1938 (R. 227-228).[1] Subsequently, unlimited supplementation of filed contracts by additional agreements and the filing of new contracts multiplied the complexity of already complicated rate schedules (R. 99, 228).

Appreciating the difficulties inherent in that system and in order to assure uniformity and simplification of rate schedules, the Commission in August 1940 distributed a draft of "Tentative Instructions for Preparing and Filing FPC Gas Schedules" to all natural-gas companies, inviting their comments and suggestions (R. 2, 99, 228). Before the instructions could be worked into final form, however, the manpower shortage caused by the defense mobilization program compelled postponement of this work (R. 99, 228).

Although action on the regulations was held in abeyance until 1948, a substantial number of natural-gas companies, voluntarily and in cooperation with the Commission's staff, revised their complicated rate schedules by filing tariffs similar to

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[1] 18 CFR Subchapter B, 1938 Supp., Section 54.1 of the provisional regulations defined "rate schedule" to "include and mean any contract, agreement, lease of facilities or other writing, including supplements thereto, which specifies or affects the rates and charges to be assessed or collected for the transportation or sale of natural gas subject to the jurisdiction of the Commission, or which establishes any rule, regulation, classification, or practice affecting such rates and charges or the service rendered or to be rendered."

those now provided for in the present regulations (R. 3, 228). Prior to issuance of Order No. 144, sales of natural gas under such voluntarily filed tariffs represented about 50% of the volume of sales by all natural-gas companies reporting to the Commission and accounted for more than 50% of total revenue derived from sales subject to the jurisdiction of the Commission (R. 228). Before converting their sales contracts to tariff form, these companies had on file with the Commission 398 separate schedules consisting of about 7,000 pages; the substituted tariffs comprised only 388 pages (R. 228).

Recognizing the benefits from these changes to consumers and to the industry as well (R. 3, 229), the Commission acting under Sections 4(c) and 16 of the Natural Gas Act [2] again in April 1948 pro-

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[2] Section 4(c) provides:

> Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

Section 16 provides in part:

> The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind

posed amendments of its regulations relating to rate schedules, mailing a copy to each natural-gas company with an invitation to submit comments and suggestions by May 14, 1948, and publishing the proposals in the Federal Register on April 16, 1948 (R. 229, 1-25, 26; 13 F. R. 2045-2050). After twice extending, upon request, the time for filing comments (R. 35, 38-39), the Commission, on June 15, 1948, in response to the several requests, directed that a public hearing be held at a time and place to be designated subsequently, although stating that such rules as were proposed were "not required by the Natural Gas Act to be made on the record after opportunity for hearing" (R. 40-42; 13 F. R. 3343-3344). On July 2, 1948, the Commission fixed the date of hearing for September 20, 1948 (R. 43-44; 13 F. R. 3820). Many industry suggestions respecting the initial proposals were constructive, and were incorporated in a revision which likewise was mailed to each natural-gas company and published in the Federal Register on September 8, 1948 (R. 229, 63-87; 13 F. R. 5214).

A number of parties, including petitioner, requested the Commission to postpone the presentation of evidence and to limit the September 20, 1948, hearing to oral argument with respect to the lawfulness of certain aspects of the proposals (R. 91-93). The Commission, on September 13, 1948,

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such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act. * * *

ordered that, in lieu of the presentation of evidence theretofore set for September 20, 1948, oral argument be heard on that date on "all issues involved" in the matter, and that such argument would "conclude the proceedings incident to this rule-making unless otherwise determined by the Commission at the conclusion of such oral argument" (R. 94-95; 13 F. R. 5441). Oral argument was heard by the Commission on September 20, 1948 (R. 96-226).

On October 28, 1948, the Commission issued its Order No. 144 (R. 227-254). The principal attacks on the proposed revisions were centered on those relating to restatement in dollars and cents of contract rates providing for "sharing" or "percentage" arrangements, and those thought to affect automatic "adjustment" clauses of contracts then on file. It was contended that these provisions would affect substantive rights of the natural-gas companies which it was claimed could not be modified in a general rule-making proceeding. To meet these attacks "to the extent that they have substance," the Commission in Order No. 144 made additional modifications in the regulations as issued (R. 229-230). As revised, the regulations (Section 154.82) permit natural-gas companies to retain in effect, without change, price provisions of presently effective rate schedules which cannot be restated in dollars and cents without effecting a change in rates or charges. In addition, Section 154.85 was reworded so as to clarify the Commission's intention to permit contracts now on file as effective rate

schedules to continue in effect as executed service agreements until they expire or are superseded. Thirteen companies, including petitioner (R. 257-264), applied for rehearing which the Commission denied on December 21, 1948 (R. 274-276).

ARGUMENT

The court below was, we submit, clearly correct in the holding that Section 19(b) of the Natural Gas Act does not vest jurisdiction in it directly to review the Commission's amendment of its general rules and regulations here involved.

1. In enacting Section 19(b), Congress has not made every Commission action reviewable in the court of appeals [3] but rather has prescribed, as it has the undoubted power to do,[4] certain conditions

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[3] *F. P. C.* v. *Metropolitan Edison Co.*, 304 U. S. 375 (order directing filing of information and production of records); *F. P. C.* v. *Hope Natural Gas Co.*, 320 U. S. 591, 618-619 (findings as to lawfulness of past rates); *Carolina Aluminum Co.* v. *F. P. C.*, 97 F. 2d 435 (C. A. 4) (findings that interstate commerce would be affected by construction of proposed hydro-electric project); *Canadian River Gas Co.* v. *F. P. C.*, 110 F. 2d 350 (C. A. 10), certiorari denied, 311 U. S. 693 (order instituting investigations); *East Ohio Gas Co.* v. *F. P. C.*, 115 F. 2d 385 (C. A. 6) (order instituting investigation); *Aluminum Company of America* v. *F. P. C.*, 130 F. 2d 445 (C.A.D.C.) (order denying request for trial examiner's report); *Mississippi Power & Light Co.* v. *F. P. C.*, 131 F. 2d 148 (C. A. 5) (order instituting investigation).

[4] *American Federation of Labor* v. *Labor Board*, 308 U. S. 401, 404; *American Power & Light Company* v. *SEC*, 325 U. S. 385, 389; *F. P. C.* v. *Pacific Power & Light Co.*, 307 U. S. 156, 159; *Oklahoma* v. *United States Civil Service Commission*, 330 U. S. 127, 137.

which must be met before the courts of appeals may review Commission action taken under the Act. *Federal Power Commission* v. *Metropolitan Edison Co.*, 304 U. S. 375, 384, points out that Section 313(b) of the Federal Power Act indicates, as do the identical provisions of Section 19(b),

> the nature of the orders which are subject to review. Upon service of the petition for review, the Commission is to certify and file with the appellate court "a transcript of the record upon which the order complained of was entered." The statute contemplates a case in which the Commission has taken evidence and made findings. Its findings, if supported by evidence, are to be conclusive. The appellate court may order additional evidence to be taken by the Commission and the Commission may thereupon make modified or new findings. The provision for review thus relates to orders of a definitive character dealing with the merits of a proceeding before the Commission and resulting from a hearing upon evidence and supported by findings appropriate to the case.

Indeed it would be difficult for a court of appeals to review an administrative order which was not, and was not required to be, based upon evidence adduced before the administrative body.

There are additional factors, unmentioned in the *Metropolitan Edison* case, which strongly reinforce the Court's conclusion there. For example, there is a close interrelationship between Section 19(b)

and the numerous provisions of the Act making a hearing, or opportunity therefor, a condition precedent to certain Commission action.[5] Thus, the "proceeding" which under Section 19(b) precedes a reviewable "order" refers to the "proceedings" described in the various provisions relating to the procedure at hearings. See, *e.g.*, Section 14(e), 15(a), 15(b), 17(a), and 22. Moreover, Section 19(b) permits review only at the instance of a "party to a proceeding" who is "aggrieved" by the Commission's "order"; mere aggrievement of interested persons is insufficient to support review and, of course, it is settled that not every Commission action or order constitutes a reviewable "order." See, *supra*, p. 8, fn. 3. Finally, no objection to an "order" may be considered on review unless it shall have been urged before the Commission in an "application for rehearing," and, indeed, Section 19(a) prohibits judicial review unless application shall first have been made to the Commission for "rehearing" on the "order." Clearly, therefore,

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[5] Section 3 (issuance of export or import orders); Section 4(d), (e) (lawfulness of new rates filed by natural-gas company); Section 5(a) (determination of just and reasonable rates); Section 7(a) (extension or improvement of transportation facilities); Section 7(c) (application for certificates of public convenience and necessity); Section 7(f) (determination of service areas); Section 8(a) (determination of accounts into which particular outlays or receipts may be entered); Section 9(a) (requirement of proper and adequate depreciation and amortization accounts); Section 14(b) (adequacy of gas reserves).

a Commission order, which is reviewable under Section 19(b) is one which is adjudicatory in nature, entered after a hearing or opportunity therefor, and based on a record; *i.e.*, an order which "is analogous to the judgment of a court"—not the legislative function of rule making. *Carolina Aluminum Co.* v. *F. P. C.*, 97 F. 2d 435, 436 (C. A. 4).

2. Order No. 144 does not meet Section 19(b)'s "distinctive formulation of the conditions under which resort to the courts may be made." Cf. *F. P. C.* v. *Pacific Power & Light Co.*, 307 U. S. 156, 159. In issuing these regulations, the Commission proceeded in announced reliance on Sections 4 and 16 of the Act and promulgated regulations purporting to be of general applicability, as authorized by these Sections. These provisions do not require the holding of a hearing prior to the promulgation of the regulations and no "hearing" was in fact held; no "proceeding" of any sort was prerequisite under the Natural Gas Act.[6] Nor did the Adminis-

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[6] These sections are comparable to other provisions of the Act vesting power in the Commission to issue legislative rules of general applicability as well as orders of an investigatory or procedural character, in that similarly no hearing is required as a condition precedent to Commission action. For example, Section 8(a) requires that every natural-gas company keep such accounts and records "as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this act." That authorization, the foundation of the Commission's prescription of its "Uniform System of Accounts for Natural-Gas Companies"

trative Procedure Act require a "proceeding" of the sort plainly contemplated by Section 19(b); that Act requires only that the Commission give appropriate notice to the persons subject to the proposed rule (Section 4(a)) and afford interested persons an opportunity to submit "written data, views, or arguments with or without opportunity to present the same orally in any manner" (Section 4(b)).[7] Even the opportunity for submission or oral arguments afforded by the Commission was discretionary. Cf. *Federal Communications Commission* v. *WJR,* 337 U. S. 265. In short, mere

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(18 CFR Part 20), is not conditioned upon a prior hearing. See Administrative Procedure in Government Agencies, S. Doc. No. 10, 77th Cong., 1st sess., Part 12 (Federal Power Commission), p. 40; cf. *Northwestern Electric Co.* v. *F. P. C.,* 321 U. S. 119, 122-123. See, also, Sections 8(b), 5(a), and 10(a).

[7] While Section 4(b) of the Administrative Procedure Act also requires that "where rules are required by statute to be made on the record after opportunity for an agency hearing" Section 7, concerning "hearings," and Section 8 concerning "decisions" shall apply in the place of Section 4(b), we have already shown (*supra,* p. 11) that the Natural Gas Act did not require the Commission to issue these regulations "on the record after opportunity for agency hearing." Accordingly, Section 4(b), not Sections 7 and 8 of the Administrative Procedure Act, is applicable. See Attorney General's Manual on The Administrative Procedure Act (1947), p. 32, pointing out that "statutes rarely require hearings prior to the issuance of rules of general applicability," the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U. S. C. 301) being "almost unique" in requiring hearing and decision on the record in the case of substantive rules of general applicability.

issuance would have satisfied the requirements of the Natural Gas Act, and prior notice with right to comment in writing would have satisfied the requirements of the Administrative Procedure Act.[8] Hence, there was no "evidence," no "transcript of the record,"[9] and no "findings" of the sort contemplated; none was required.

Moreover, consistently with the Commission's compliance with rule-making procedures, the regulations on their face indicate that they are of general applicability. They undertake to apply generally to all natural-gas companies, and although the Commission label is not controlling (*American Federation of Labor* v. *Labor Board,* 308 U. S. 401, 408), it seems clear from the number of natural-gas companies which participated before the Commission (R. 63, 96-98, 100-102, 229) and sought rehearing (R. 276) that as a practical matter the regulations were understood by the industry to apply generally to natural-gas companies. Indeed, since December 1, 1948, their effective date, the new regulations have in fact been applied to all natural-gas companies having rate schedules on file except petitioner, in whose case the court below,

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[8] In promulgating general rules, as in legislation, there is no constitutional right to a hearing. *Bi-Metallic Investment Co. v. State Board of Equalization,* 239 U. S. 441; *Bowles* v. *Willingham,* 321 U. S. 503, 519-520.

[9] The materials relevant to promulgation of the regulations which the Commission certified to and filed with the court below plainly does not constitute a "transcript of the record" within the contemplation of Section 19(b).

with the Commission's consent, has stayed those parts of the regulations of which petitioner complained (R. 340-341). In addition, the regulations did not affect any then existing contracts including those of petitioners. There are express provisions to that effect in the regulations (See Sections 154.52, 154.82, 154.85 (R. 243, 249, 251, cf. R. 230)) and the Commission has given assurances that it interprets the regulations as operating only prospectively (R. 353).[10] Cf. *American T. & T. Co.* v. *United States*, 299 U. S. 232, 241; *Eccles* v. *Peoples Bank*, 333 U. S. 426, 435. In these circumstances, it seems plain that the regulations involved rule making and were not adjudicatory as petitioner contends (Pet. passim),[11] and hence that no

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[10] The motion for stay of the regulations filed by Michigan Consolidated Gas Company, which had also sought review, was denied upon the agreement of counsel to a suggestion of the presiding judge that there be incorporated in the order denying the stay the statement of Commission counsel that:

> The Commission interprets Order No. 144 as not authorizing the making of any change in an effective rate, charge, or contract provision, without compliance with the Natural Gas Act, as amended.

[11] *American Sumatra Tobacco Corp.* v. *SEC*, 93 F. 2d 236 (C. A. D. C.); *Philadelphia Co.* v. *SEC*, 164 F. 2d 889 (C. A. D. C.), certiorari denied, 333 U. S. 828, and *Philadelphia Co.* v. *SEC*, 175 F. 2d 808 (C. A. D. C.), certiorari granted and reversed as moot, 337 U. S. 901, relied on by petitioner (Pet. 8-11), involved orders which the court of appeals had held to be adjudicatory on the facts as admitted in the pleadings. Accordingly, the holdings in these cases, that a hearing was a prerequisite to agency action or that such action resulted in a reviewable "order," are inapposite here.

hearing was required prior to their issuance and that they are not reviewable at this time under Section 19(b) of the Act.[12]

3. Cases such as *Columbia Broadcasting System, Inc.* v. *United States,* 316 U. S. 407, holding that general regulations which injure the complainant irreparably are reviewable as "orders" under the provisions of Section 402(a) of the Communications Act of 1934 (48 Stat. 1093, 47 U. S. C. 402(a) and the Urgent Deficiencies Act (38 Stat. 219, formerly 28 U. S. C. 47)[13] are clearly distinguishable, because of differences in the underlying statute and because the court is a district court of original jurisdiction. Review under these statutes covers all "orders" of the administrative agency (except for certain specified exceptions under Sec-

---

[12] We do not suggest that the regulations are completely beyond judicial scrutiny, but rather that they are not directly reviewable under Section 19(b). We believe the Natural Gas Act permits other ways for testing the regulations' validity. For example, if petitioner should not properly comply with the regulations, the Commission could set the matter for hearing, ordering it to show cause why it should not be directed to comply. Such a proceeding could result in an "order" reviewable under Section 19(b). Cf. *Northwestern Electric Co.* v. *F. P. C.,* 321 U. S. 119; *F. P. C.* v. *East Ohio Gas Co.,* 338 U. S. 464. Or, if petitioner refused to comply, it would have "full opportunity" to contest the validity of the regulations when the Commission applied for enforcement to the proper United States District Court. *F. P. C.* v. *Metropolitan Edison Co.,* 304 U. S. 375, 386-387.

[13] The revision of 28 U. S. C. by the Act of June 25, 1948 (62 Stat. 869), distributed the provisions of Section 47 among several sections. See, 28 U. S. C. 1253, 2101, 2284, 2325.

tion 402(a)), and the criteria for determining reviewability is whether the administrative action affects or determines rights generally, even though not directed to any particular person or corporation. *Columbia Broadcasting System, Inc.* v. *United States, supra,* at 417; see, also *Assigned Car Cases,* 274 U. S. 564; *United States* v. *B. & O. R. Co.,* 293 U. S. 454.

Review under Section 19(b) is, as we have shown, *supra,* pp. 8-11, totally different and far more circumscribed. Under the Urgent Deficiencies Act, for example, the right to review is established upon a statement of a cause of action in equity whereas an allegation of threatened injury under the Natural Gas Act is pertinent only with respect to the determination of aggrievement under Section 19(b)—one of a number of conditions which that section imposes as a prerequisite for review. With respect to the identical provisions of the Federal Power Act, this Court has already pointedly recognized the distinction in *F. P. C.* v. *Pacific Power & Light Co.,* 307 U. S. 156, 159:

> If the Federal Power Act had formally taken over the statutory provisions of the Urgent Deficiencies Act pertaining to review of orders of The Interstate Commerce Commission, the decision in *Rochester Telephone Corp.* v. *United States,* [307 U. S. 125,] would dispose of this case and sustain the assumption of jurisdiction below. But the Power Act contains a distinctive formulation of the

conditions under which resort to the courts may be made and Congress determines the scope of jurisdiction of the lower federal courts.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1950.

APPENDIX

The Administrative Procedure Act of June 11, 1946, c. 324, 60 Stat. 237, 5 U. S. C. 1001, *et seq.*, provides in pertinent part as follows:

* * * * * * * *

RULE MAKING

SEC. 4. Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(*a*) NOTICE.—General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure

thereon are impracticable, unnecessary, or contrary to the public interest.

(*b*) PROCEDURES.—After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

(*c*) EFFECTIVE DATES.—The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than thirty days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(*d*) PETITIONS.—Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

* * * * * * * *

HEARINGS

SEC. 7. In hearings which section 4 or 5 require to be conducted pursuant to this section—

(*a*) PRESIDING OFFICERS.—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(*b*) HEARING POWERS.—Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the

settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this Act.

(*c*) EVIDENCE.—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(*d*) RECORD.—The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive re-

cord for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(*a*) ACTION BY SUBORDINATES.—In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such offi-

cers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

(*b*) SUBMITTALS AND DECISIONS.—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

* * * * * * * *

JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(*a*) RIGHT OF REVIEW.—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(*b*) FORM AND VENUE OF ACTION.—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review as provided by law.

(*c*) REVIEWABLE ACTS.—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly

required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(*d*) INTERIM RELIEF.—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(*e*) SCOPE OF REVIEW.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1)

arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

* * * * * * * *

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 216

UNITED GAS PIPE LINE COMPANY, *Petitioner*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

This very short reply brief is filed because of two material, relevant matters that have occurred since the petition for a writ of certiorari was filed in this Honorable Court in the above entitled and numbered cause. These two matters are:

I.

As showing the general importance of the decision of the Court below (R. 349), we desire to point out that in the case of *Arrow Airways, Inc., et al.* v. *Civil Aeronautics Board,* No. 228, October Term, 1950, United States Supreme Court, (Opinion of lower court reported 182 F. 2d 705) a petition for a writ of certiorari has recently been filed in this Court which specifically shows on pages 5 and 6 thereof the national scope, effect, and importance of the opinion

of the Court below herein and of the matters and things involved in the petition for a writ of certiorari herein filed.

The opinion of the court below (R. 349) was the sole basis for the one-paragraph opinion (182 F. 2d 705) involved in said docket No. 228, *supra*.

As was predicted on page 5 of the petition for certiorari herein filed, the opinion of the Court below (R. 349) is already being cited as deciding that from the standpoint of direct judicial review an administrative agency can avoid same (regardless of the adjudicatory impact on any party) by not holding any hearing and using the label of "rule making".

The artful procedure used by Respondent herein to avoid direct judicial review will, in the absence of intervention by this Court, set a national pattern for practically all administrative agencies to achieve the same result. This is amply demonstrated by the brief in opposition to certiorari filed in said suit No. 228 by the Civil Aeronautics Board. (See pages 7 and 8 of said brief).

The said artful procedure used by Respondent consists of:

(1) Not having any hearing.

(2) Using the label of "rule making".

(3) Referring only to sections of the applicable statute relating to rule making and making no mention of sections requiring a hearing.

(4) Not filing a motion to dismiss because of admitting thereby, for the purpose of the motion, the allegations of the petition for direct judicial review.

(5) Requesting only, by brief and in oral argument, that the Court on its own initiative dismiss.

II.

Respondent has in the last few days filed its brief in opposition to the petition for a writ of certiorari herein.

On pages 13, 14, 15 and 16 of said petition, and in paragraphs 5 and 6 of the petition for rehearing (R. 361 and 363) in the Court below, it was specifically pointed out that Respondent had admitted in effect that the challenged order was adjudicatory as to Petitioner. Specific page references to Exhibit 1 showing said admissions were given on pages 15 and 16 of said petition.

Respondent in its brief in opposition to said petition for a writ of certiorari has very obviously made no reference to said admissions, and makes an argument based on the premise that the challenged Order No. 144 is not adjudicatory as to Petitioner.

Respondent having admitted that said order is adjudicatory as to Petitioner is bound by said admissions, and its failure to explain, repudiate, avoid, or even mention same in its brief in opposition to said petition is highly significant.

In said petition it was stated (page 14) Respondent *has not* and *will not deny* certain adjudicatory impacts of the challenged order. Surely the brief in opposition provided an excellent opportunity for Respondent to attempt to explain or avoid said admissions, if possible.

Since the challenged order is admittedly adjudicatory as to Petitioner and was admittedly issued without a hearing, it is invalid as violating the due process clause of the Fifth Amendment to the Constitution of the United States. Extracts from relevant cases sustaining this "horn book" law will be found on pages 16 to 20 inclusive of the petition for the writ of certiorari herein filed.

Conclusion.

For the foregoing reasons and the reasons set forth in the Petition for a Writ of Certiorari herein filed, said petition should be granted.

Respectfully submitted,

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September 5, 1950.

No. 216

FEDERAL POWER COMMISSION

NATURAL GAS ACT

JANUARY 1, 1960

FEDERAL POWER COMMISSION

NATURAL GAS ACT

JANUARY 1, 1950

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FOREWORD

NATURAL GAS ACT

The Natural Gas Act was approved June 21, 1938 (52 Stat. 821–833; Title 15 U. S. C. §§ 717–717w) and amended February 7, 1942 (56 Stat. 83–84; Title 15 U. S. C. § 717f), and July 25, 1947 (61 Stat. 459; Title 15 U. S. C. § 717f (h)).

NATURAL GAS ACT

[PUBLIC—No. 688—75TH CONGRESS]

[CHAPTER 556—3D SESSION]

[H. R. 6586]

AN ACT

To regulate the transportation and sale of natural gas in interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

NECESSITY FOR REGULATION OF NATURAL-GAS COMPANIES

Declaration of policy.

SECTION 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

Act applies to transportation and sale for resale of natural gas in interstate commerce.

(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas. [52 Stat. 821 (1938); 15 U. S. C. § 717 (1946)]

Not to apply to other transportation or sale or to the local distribution or facilities or gathering of natural gas.

Meaning of terms as used.

SEC. 2. When used in this act, unless the context otherwise requires—

"Person."
"Corporation."

(1) "Person" includes an individual or a corporation.

(2) "Corporation" includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.

"Municipality."

(3) "Municipality" means a city, county, or other political subdivision or agency of a State.

"State."

(4) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

"Natural gas."

(5) "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

"Natural-gas company."

(6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

"Interstate commerce."

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

"State commission."

(8) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality.

"Commission" and "Commissioner."

(9) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively. [52 Stat. 821 (1938); 15 U. S. C. § 717a (1946)]

EXPORTATION OR IMPORTATION OF NATURAL GAS

Exportation or importation prohibited except on Commission order granting authority.

SEC. 3. After six months from the date on which this act takes effect no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The

Application; hearing.

Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate. [52 Stat. 822 (1938); 15 U. S. C. § 717b (1946)]

Order may be granted wholly, or in part, and on conditions.

Supplemental order.

RATES AND CHARGES; SCHEDULES; SUSPENSIONS OF NEW RATES

SEC. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

Rates and charges for transportation or sale to be just and reasonable.

Unreasonable rates and charges are unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

Undue preference or advantage prohibited.

Unreasonable differences in rates, etc., or in localities or classes of service forbidden.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

Filing and posting of rate schedules subject to rules and regulations of Commission.

Public to have access to rate schedules.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in

Thirty days' notice of change in rates required.

any rule, regulations, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

Posting; filing rate changes.

Relief by Commission from operation of section.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any

Investigation of new schedules may be made on complaint or initiative of Commission.

Hearing.

Suspension pending decision.

Suspension period not to exceed 5 months.

Rate, etc., for sale for resale for industrial use only cannot be suspended.

On expiration of suspension period change, on motion, shall go into effect.

If rates are increased, bond for refund may be required.

amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [52 Stat. 822 (1938); 15 U. S. C. 717c (1946)]

Accurate accounts of increased rate collections.

Refund of increased amount.

Burden of proof as to reasonableness of increased rate on company.

Preference.

FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSPORTATION

SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however, That* the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

Commission upon own motion or complaint may determine reasonable rate, etc.

Just and reasonable rate, etc., shall be fixed by order.

Commission cannot order increase apart from filed schedule, but may order decrease in rates, etc.

Commission may investigate and determine cost of production or transportation where it cannot establish rate.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas. [52 Stat. 823 (1938); 15 U. S. C. 717d (1946)]

ASCERTAINMENT OF COST OF PROPERTY

Actual legitimate cost of property, depreciation, etc., to be ascertained for rate making.

SEC. 6. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

Inventory, statement of original cost, and additions, betterments, etc., to be filed upon request.

(b) Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction. [52 Stat. 824 (1938); 15 U. S. C. 717e (1946)]

EXTENSION OF FACILITIES; ABANDONMENT OF SERVICE

Commission may direct extension or improvement of transportation facilities and establishment of physical connections.

SEC. 7. (a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Com-

mission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers. [52 Stat. 824 (1938); 15 U. S. C. 717f (a) (1946)]

Commission has no authority to compel enlargement of facilities, etc., if ability of company to render adequate service is impaired.

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment. [52 Stat. 824 (1938); 15 U. S. C. 717f (b) (1946)]

No abandonment of facilities or service without approval of Commission.

(c)[1] No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however*, That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

Certificate of public convenience and necessity required for construction or extension of facilities.

Grandfather clause certificates.

[1] Subsection 7 (c) was amended February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83.

Procedure upon application for non-grandfather clause certificates.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That

Temporary certificates.

the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice of hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest. [52 Stat. 825 (1938), as amended, 56 Stat. 83 (1942); 15 U. S. C. § 717f (c) (1946)].[1]

Exemption by regulation.

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[1] As originally enacted June 21, 1938 by Public Law No. 688, 75th Congress, Chapter 556, 3d Session [H. R. 6586], 52 Stat. 825, Section 7 (c) read as follows:

"(c) No natural-gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural-gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof: *Provided, however,* That a natural-gas company already serving a market may enlarge or extend its facilities for the purpose of supplying increased market demands in the territory in which it operates. Whenever any natural-gas company shall make application for a certificate of convenience and necessity under the provisions of this subsection, the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission. In passing on applications for certificates of convenience and necessity, the Commission shall give due consideration to the applicant's ability to render and maintain adequate service at rates lower than those prevailing in the territory to be served, it being the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest." (52 Stat. 825 (1938))

Application for certificate; form and content.

(d)[3] Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require. [56 Stat. 84 (1942); 15 U. S. C. § 717f (d) (1946)]

Requirements for issuance of certificate.

(e)[4] Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require. [56 Stat. 84 (1942); 15 U. S. C. § 717f (e) (1946)]

Commission may attach terms and conditions to issuance of certificate.

Commission may determine service areas.

(f)[5] The Commission, after a hearing had upon its own motion or upon application, may determine the

(Footnote 2 continued.)

Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, which amended Section 7 (c), effective February 7, 1942, was enacted after the Commission's decision *In the Matter of Kansas Pipe Line & Gas Company*, 2 F. P. C. 29.

[3] Subsection 7 (d) was added February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, 84.

[4] Subsection 7 (e) was added February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, 84.

[5] Subsection 7 (f) was added February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, 84.

service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization. [56 Stat. 84 (1942); 15 U. S. C. § 717f (f) (1946)]

Commission may issue certificate for service of area already being served.

(g)[6] Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company. [56 Stat. 84 (1942); 15 U. S. C. § 717f (g) (1946)]

Certificate holder may acquire right-of-way for pipe line by eminent domain proceedings in U. S. District Court.

(h)[7] When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000. [61 Stat. 459 (1947); 15 U. S. C. § 717f (h) (Supp. II, 1949)]

Practice and procedure shall conform to that of State where property situated.

[6] Subsection 7 (g) was added February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, 84.

[7] Subsection 7 (h) was added July 25, 1947 by Public Law No. 245, 80th Congress, Chapter 333, 1st Session [H. R. 2956], 61 Stat. 459.

ACCOUNTS, RECORDS, AND MEMORANDA

Natural-gas companies must keep accounts, records, etc., in accordance with Commission rules.

SEC. 8. (a) Every natural-gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this act: *Provided, however*, That nothing in this act shall relieve any such natural-gas company from keeping any accounts, memoranda, or records which such natural-gas company may be required to keep by or under authority of the laws of any State.

Not relieved from keeping accounts, records, etc., required by State laws.

Commission may prescribe system of accounts and classify companies.

The Commission may prescribe a system of accounts to be kept by such natural-gas companies, and may classify such natural-gas companies and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited.

Burden of proof to justify entries.

The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

Commission may suspend charges or credits pending proof.

Commission to have access to and right to inspect accounts, etc.

(b) The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of natural-gas companies; and it shall be the duty of such natural-gas companies to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do.

Companies to furnish information, as Commission orders.

Information obtained by employees, etc., of Commission not to be divulged except as ordered by Commission or court.

No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books, records, data, or accounts, except insofar as he may be directed by the Commission or by a court.

Books of persons controlling natural-gas companies subject to Commission examination.

(c) The books, accounts, memoranda, and records of any person who controls directly or indirectly a natural-gas company subject to the jurisdiction of the Commission and of any other company controlled by such person, insofar as they relate to tranactions with or the business of such natural-gas company, shall be subject to examination on the order of the Commission. [52 Stat. 825 (1938); 15 U. S. C. 717g (1946)]

RATES OF DEPRECIATION

Depreciation and amortization accounts to be in accordance with Commission rules.

Commission may determine adequate rate of depreciation.

SEC. 9. (a) The Commission may, after hearing, require natural-gas companies to carry proper and adequate depreciation and amortization accounts in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may from time to time ascertain and determine, and by order fix, the proper and adequate rates of depreciation and amortization of the several classes of property of each natural-gas company used or useful in the production, transportation, or sale of natural gas. Each natural-gas company shall conform its depreciation and amortization accounts to the rates so ascertained, determined, and fixed. No natural-gas company subject to the jurisdiction of the Commission shall charge to operating expenses any depreciation or amortization charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation or amortization other than that prescribed therefor by the Commission. No such natural-gas company shall in any case include in any form under its operating or other expenses any depreciation, amortization, or other charge or expenditure included elsewhere as a depreciation or amortization charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State commission to determine in the exercise of its jurisdiction, with respect to any natural-gas company, the percentage rates of depreciation or amortization to be allowed, as to any class of property of such natural-gas company, or the composite depreciation or amortization rate, for the purpose of determining rates or charges.

Depreciation charges shall not be charged to operating expenses unless authorized.

Jurisdiction of State commissions not limited by this section.

(b) The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation or amortization rates, shall notify each State commission having jurisdiction with respect to any natural-gas company involved and shall give reasonable opportunity to each such commission to present its views and shall receive and consider such views and recommendations. [52 Stat. 826 (1938); 15 U. S. C. 717h (1946)]

Commission may prescribe rules as to accounts, etc., or depreciation rates.

Notice and opportunity to State commissions to present recommendations.

PERIODIC AND SPECIAL REPORTS

SEC. 10. (a) Every natural-gas company shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this act. The Commission may prescribe the manner and form in which such reports shall be made, and require from such natural-gas companies specific answers to all questions upon which the Commission may need information. The Commission may require that such reports shall include, among other things, full information as to assets and liabilities, capitalization, investment and reduction thereof, gross receipts, interest due and paid, depreciation, amortization, and other reserves, cost of facilities, cost of maintenance and operation of facilities for the production, transportation, or sale of natural gas, cost of renewal and replacement of such facilities, transportation, delivery, use, and sale of natural gas. The Commission may require any such natural-gas company to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies.

Natural-gas companies shall file reports as required.

Form to be prescribed by Commission.

Contents of reports.

Current determination of costs, etc.

Reports under oath.

(b) It shall be unlawful for any natural-gas company willfully to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, memorandum, record, or account required to be made, filed, or kept under this act or any rule, regulation, or order thereunder. [52 Stat. 826 (1938); 15 U. S. C. 717i (1946)]

Willful hindrance in making reports, etc., unlawful.

STATE COMPACTS; REPORTS ON

Commission to assemble and to report to Congress information on proposed compacts between States relating to conservation, etc., of natural gas.

SEC. 11. (a) In case two or more States propose to the Congress compacts dealing with the conservation, production, transportation, or distribution of natural gas it shall be the duty of the Commission to assemble pertinent information relative to the matters covered in any such proposed compact, to make public and to report to the Congress information so obtained, together with such recommendations for further legislation as may appear to be appropriate or necessary to carry out the purposes of such proposed compact and to aid in the conservation of natural-gas resources within the United States and in the orderly, equitable, and economic production, transportation, and distribution of natural gas.

Commission to assemble current information relative to compacts between States.

Information to be public.

Reports and recommendations to be made to Congress.

(b) It shall be the duty of the Commission to assemble and keep current pertinent information relative to the effect and operation of any compact between two or more States heretofore or hereafter approved by the Congress, to make such information public, and to report to the Congress, from time to time, the information so obtained together with such recommendations as may appear to be appropriate or necessary to promote the purposes of such compact.

Records of other Government agencies to be available to Commission.

(c) In carrying out the purposes of this act, the Commission shall, so far as practicable, avail itself of the services, records, reports, and information of the executive departments and other agencies of the Government, and the President may, from time to time, direct that such services and facilities be made available to the Commission. [52 Stat. 827 (1938); 15 U. S. C. 717j (1946)]

OFFICIALS DEALING IN SECURITIES

Unlawful for officers or directors to benefit from sale or issuance of securities.

SEC. 12. It shall be unlawful for any officer or director of any natural-gas company to receive for his own benefit, directly or indirectly, any money or thing of value in respect to the negotiation, hypothecation, or sale by such natural-gas company of any security issued, or to be issued, by such natural-gas company, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends, other than liquidating dividends, of such natural-gas company from any funds

Unlawful for officers or directors to pay dividends from capital account.

properly included in capital account. [52 Stat. 827 (1938); 15 U. S. C. 717k (1946)]

COMPLAINTS

State, municipality, or State commission may file complaints.

SEC. 13. Any State, municipality, or State commission complaining of anything done or omitted to be done by any natural-gas company in contravention of the provisions of this act may apply to the Commission by petition, which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such natural-gas company, which shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. [52 Stat. 827 (1938); 15 U. S. C. 717l (1946)]

Contents of petition.

Complaint to be forwarded to natural-gas company by Commission.

Answers to complaints to be filed in time specified by Commission.

INVESTIGATIONS BY COMMISSION; ATTENDANCE OF WITNESSES; DEPOSITIONS

Investigation by Commission of violations, etc.

SEC. 14. (a) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of this act or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation to the Congress. The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish in the manner authorized by section 312 of the Federal Power Act, and make available to State commissions and municipalities, information concerning any such matter.

Permission to persons to file statement concerning investigation.

Commission may publish information and make information available to State commissions, etc.

(b) The Commission may, after hearing, determine the adequacy or inadequacy of the gas reserves held or controlled by any natural-gas company, or by anyone on its behalf, including its owned or leased properties or royalty contracts; and may also, after hearing, deter-

Adequacy of gas reserves may be determined by Commission.

Reasonableness of inclusion in operating expenses, etc., of charges for unoperated lands or leases, delay rentals.

Natural-gas companies may be required to file copies of all leases, royalty agreements.

mine the propriety and reasonableness of the inclusion in operating expenses, capital, or surplus of all delay rentals or other forms of rental or compensation for unoperated lands and leases. For the purpose of such determinations, the Commission may require any natural-gas company to file with the Commission true copies of all its lease and royalty agreements with respect to such gas reserves.

Member of Commission may administer oath, subpena witnesses, compel their attendance, etc., and require production of books, records, etc.

Designated place of hearing.

Fees of witnesses.

(c) For the purpose of any investigation or any other proceeding under this act, any member of the Commission, or any officer designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or at any designated place of hearing. Witnesses summoned by the Commission to appear before it shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

Aid of court may be invoked in cases of refusal to obey subpenas, contumacy.

Venue for application.

Court may order appearance of witness and production of records.

Failure to obey court order punishable as contempt.

Service of process.

Misdemeanor for failure to appear and testify or to produce books, etc.

(d) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedi-

ence to the subpena of the Commission, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

Fine and imprisonment upon conviction.

(e) The testimony of any witness may be taken at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition at any time after the proceeding is at issue. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it at any stage of such proceeding or investigation. Such depositions may be taken before any person authorized to administer oaths not being of counsel or attorney to either of the parties, nor interested in the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided. Such testimony shall be reduced to writing by the person taking deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

Testimony by deposition.

Deposition may be taken before anyone authorized to administer oaths.

Counsel or parties in interest may not take deposition.

Notice of taking of deposition to opposite party.

Witnesses may be compelled to make deposition, etc.

Testimony shall be reduced to writing and subscribed to by deponent.

(f) If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

Deposition may be taken in foreign country.

Depositions to be filed with Commission.

(g) Witnesses whose depositions are taken as authorized in this act, and the person or officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States.

Fees allowed deponents and persons taking same.

(h) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obe-

No person excused from testifying, etc., before Commission on ground that testimony may tend to incriminate him.

dience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [52 Stat. 828 (1938); 15 U. S. C. 717m (1946)]

No person claiming privilege shall be prosecuted on his testimony, etc.

Not exempt from prosecution for perjury in so testifying.

HEARINGS; RULES OF PROCEDURE

Any member of Commission or designated representative may conduct hearings.

Records of hearings shall be kept.

Commission to make rules for hearings.

Parties to proceeding.

SEC. 15. (a) Hearings under this act may be held before the Commission, any member or members thereof, or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

Rules of practice and procedure; technical rules of evidence need not be applied.

Informality of hearing, etc., not to invalidate any order, rule, etc.

(b) All hearings, investigations, and proceedings under this act shall be governed by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this act. [52 Stat. 829 (1938); 15 U. S. C. 717n (1946)]

ADMINISTRATION POWERS OF COMMISSION; RULES, REGULATIONS, AND ORDERS

General powers of Commission to issue, amend, rescind orders; prescribe rules and regulations; define accounting terms; prescribe forms.

SEC. 16. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this act; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours. [52 Stat. 830 (1938); 15 U. S. C. 717o (1946)]

Effective date of rules and regulations, etc.

Persons and matters within jurisdiction of Commission may be classified.

Rules and regulations shall be filed with Secretary and open in convenient form for public inspection.

USE OF JOINT BOARDS; COOPERATION WITH STATE COMMISSIONS

Reference of matters to joint boards composed of members from States affected.

Power of joint boards.

Force and effect of action of joint boards.

SEC. 17. (a) The Commission may refer any matter arising in the administration of this act to a board to be composed of a member or members, as determined by the Commission, from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold any hearings. The action of such board shall have such force and effect and its proceedings shall be

Appointment of joint boards.

conducted in such manner as the Commission shall by regulations prescribe. The Board shall be appointed by the Commission from persons nominated by the State commission of each State affected, or by the Governor of such State if there is no State commission. Each State affected shall be entitled to the same number of representatives on the board unless the nominating power of such State waives such right. The Commission shall have discretion to reject the nominee from any State, but shall thereupon invite a new nomination from that State. The members of a board shall receive such allowances for expenses as the Commission shall provide. The Commission may, when in its discretion sufficient reason exists therefor, revoke any reference to such a board.

Allowances for expenses of board members.

Matters referred to board may be revoked.

Conferences with State commissions regarding rates, accounts, etc., authorized.

(b) The Commission may confer with any State commission regarding rate structures, costs, accounts, charges, practices, classifications, and regulations of natural-gas companies; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this act to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

Cooperation with State commission.

Information and reports of Commission available to State commissions.

Availability of Commissions' experts as witnesses to State commissions.

(c) The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of natural-gas companies. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may, upon request from a State commission, make available to such State commission as witnesses any of its trained rate, valuation, or other experts, subject to reimbursement of the compensation and traveling expenses of such witnesses. All sums collected hereunder shall be credited to the appropriation from which the amounts were expended in carrying out the provisions of this subsection. [52 Stat. 830 (1938); 15 U. S. C. 717p (1946)]

Disposition of compensation received from State commissions for experts, etc.

APPOINTMENT OF OFFICERS AND EMPLOYEES

Appointment of officers, attorneys, examiners, and experts.

SEC. 18. The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this act, without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States; and the Commission may, subject to civil-service laws, appoint such other officers and employees as are necessary for carrying out such functions and fix their salaries in accordance with the Classification Act of 1923, as amended. [52 Stat. 831 (1938); 15 U. S. C. 717q (1946)]

Provisions of other laws relevant to employment and compensation not applicable.

Appoint other officers and employees under Classification Act, 1923.

REHEARING; COURT REVIEW OF ORDERS

Rehearing on order of Commission.

SEC. 19 (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

Application must be made within 30 days of order.

Application for rehearing shall set forth grounds upon which based.

Commission may grant or deny application.

Application automatically denied unless Commission acts within 30 days.

Application for rehearing must precede court review of order.

Review of Commission orders by Circuit Court of Appeals or District of Columbia Court of Appeals.

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the

Venue for appeal. Petition for review must be filed within 60 days after order on application for rehearing.

Service of copy of petition on Commission.

Transcript of record prepared by Commission and certified to Court.

Upon filing of transcript, Court has exclusive jurisdiction to affirm, modify, or set aside Commission order.

Only objections urged before Commission shall be considered by Court.

Findings of fact supported by substantial evidence are conclusive.

Additional evidence may be adduced before Commission upon leave of Court.

Commission may modify its findings by reason of such evidence.

Modified or new findings to be filed with Court.

Judgment or decree of Court on appeal final subject to review by Supreme Court.

District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

Order of Commission not stayed by application for rehearing unless specifically ordered.

(c) The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under sub-

section (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. [52 Stat. 831 (1938); 15 U. S. C. 717r (1946)]

Order of Commission not stayed by petition for review, unless ordered by court.

ENFORCEMENT OF ACT; REGULATIONS AND ORDERS

SEC. 20. (a) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this act, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, the District Court of the United States for the District of Columbia, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this act or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices or concerning apparent violations of the Federal antitrust laws to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings.

Violation of provisions of act or of rules, regulations, orders of the Commission may be enjoined in District Court, etc.

Venue for injunction action.

Attorney General may institute criminal proceedings.

(b) Upon application of the Commission the district courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this act or any rule, regulation, or order of the Commission thereunder.

District courts, upon application of Commission, may issue writs of mandamus.

(c) The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interest in investigations made by it, or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the

Commission may employ attorneys to aid generally and to represent it in court.